

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

WAL-MART STORES, INC.

and

Case 6-CA-31556

UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL NO. 880 a/w UNITED FOOD AND
COMMERCIAL WORKERS INTERNATIONAL
UNION, AFL-CIO, CLC

Julie R. Stern, Esq., for the General Counsel.
Jonathan A. Keselenko and Robert A. Fisher, Esqs.,
(*Foley Hoag LLP*) of Boston, Massachusetts) for Respondent.
Eben O. McNair, IV, Esq., (*Schwarzwald & McNair*)
of Cleveland, Ohio for the Union.

DECISION

Statement of the Case

WILLIAM G. KOCOL, Administrative Law Judge. This case was tried in Hermitage and Beaver Falls, Pennsylvania, on February 18–20 and July 8–9, 2003. The original charge was filed by the United Food and Commercial workers Union, Local No. 880 a/w United Food and Commercial Workers International Union, AFL-CIO (the Union) on August 28, 2000.¹ Five amended charges were filed at various dated thereafter. The amended complaint and amended notice of hearing (the complaint) issued on January 14, 2003. The complaint, as amended at the hearing, alleges that Wal-Mart Stores, Inc. (Respondent) violated Section 8(a) (1) by promising to remedy employee grievances, removing and replacing a district manager in an effort to undermine support for the Union, engaging in surveillance of its employees' union activities, interrogating employees concerning their union activities, and transferring eight employees into unit positions in order to undermine support for the Union in the unit. The complaint alleges Respondent violated Section 8(a)(3) and (1) by transferring a unit employee to a nonunit position in order to dilute the support for the Union in the unit and by hiring about 8 new employees and installing new equipment to undermine support for the Union. Respondent denied the substantive allegations of the complaint and alleged that the allegation concerning "packing the unit" was barred by Section 10(b) of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel², Respondent, and the Union I make the following

¹ All dates are in 2000 unless otherwise indicated.

² I grant the General Counsel's unopposed motion to correct transcript.

Findings of Fact

I. Jurisdiction

Respondent, a corporation, operates a nationwide chain of retail stores and super centers, including a facility in New Castle, Pennsylvania (the facility), where it annually purchases and receives goods valued in excess of \$50,000 directly from point located outside the Commonwealth of Pennsylvania. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Background

As indicated, Respondent operates a super center in New Castle, Pennsylvania. The building is about 180,000 square feet and in 2000 Respondent employed about 450 employees there. The store sells both grocery and nongrocery products. Respondent has a policy called "coaching while walking around." This policy requires managers to walk through the store and talk with employees. In the process they make suggestions to employees and receive feedback from employees on how things could be improved. Respondent has an "open door" policy where employees are free to bring matters of concern to the attention of managers without fear of retaliation. Respondent also had a practice of holding meetings with employees. Meetings were held three times a day, Monday through Friday, at the facility. Store Manager Mark Eskra led these meetings. At the meetings they would discuss the sales from the previous day, make announcements such as birthdays and anniversaries, and then allow employees to raise any matters of concern. Respondent provides extensive and detailed guidance to its managers about its policy concerning unionization. Respondent's general philosophy is that it "is strongly opposes to third party representation. We are not anti-union; we are pro-Associate."

Respondent also operates the Tire Lube Express (TLE) at many of its facilities, including the one at New Castle facility. Service technicians in the TLE change oil, fill fluids, vacuum, and repair and change tires. Service writers in the TLE work as salesmen and try to persuade customers to purchase additional services; the service writer also prepares the customer's order. When the service writer is free he or she may help the technicians perform their work. Nestor Barrios was the TLE manager at the facility until late May at which time Tim Albu replaced him in that position. Moving up the managerial hierarchy, David Hill served as Respondent's district TLE manager until he was replaced by Ron Brewer on about June 22. Brad Wright was Respondent's regional TLE manager at all times material to this case.

B. Representation case

On June 13, the Union filed a petition to represent employees in the TLE. That same day Michael Martino and Andrea Cathcart, organizers for the Union, went to the facility and met Eskra in his office. They handed Eskra a letter demanding recognition for the TLE employees at the facility. However Eskra did not read the letter at that time and the Union received no response to it. A hearing on the petition was held on June 29 and July 5, 11–12. On August 3, the Regional Director directed an election in the following unit:

All full-time and regular part-time Tire and Lube Express employees, including the service manager and department

manager of automotive, employed by the Employer at its New Castle, Pennsylvania, super center; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act.

On August 30, the Board denied Respondent's request for review of the Regional Director's decision. The election was scheduled for August 31, but it was postponed indefinitely when the Union filed an unfair labor practice charge against Respondent.

C. Conditions in the TLE

Clifford Funk worked at the facility from August 1999 until September 29, 2001, at which time he resigned. As will be discussed in more detail below, he worked in the TLE until about July 27, when he was transferred to the loss prevention department. Funk described the working conditions in the TLE prior to the filing of the petition. He said there should have been three employees working on a car, but often there was only one or two. This caused an employee to have to travel up and down greasy stairs creating a safety problem. Inadequate staff also caused the employees to fall behind schedule so that they were unable to complete the oil change with the 15-minute allotted time. Employees often skipped their breaks or shortened their lunch period in an effort to get the work done. Funk also described poor equipment in the TLE. Air hoses would break and on one occasion an employee was injured when an air hose burst. The tire machines did not function properly. One machine broke an aluminum wheel and could be used only for steel wheels. The more functional tire machine slipped and caused scratches on the wheels and occasionally tires would fly off. Funk brought these concerns to the attention of Nestor Barrios, then the TLE store manager. Barrios in turn passed these issues on to Dave Hill, Respondent's TLE district manager, but Hill was unresponsive and Barrios reported this back to Funk. Funk also complained directly to Hill about the working conditions but his concerns remained unaddressed. Funk called Hill's superior, TLE Regional Manager Gary Wright. Funk complained of the working conditions and Hill's failure to rectify them, but he received no response.³ In mid 1999 Respondent had 19 persons, including supervisors, employed in the TLE at the facility. That number had decreased to 15 by June 2000.

Philip McConnell also worked in the TLE during the relevant time period. He described occasions when the employees skipped lunch and worked after closing time due to inadequate staffing. He complained to Hill who responded that the business being done by the TLE did not warrant more staffing. McConnell also described the poor condition of the equipment that the employees were required to use. The wheel balancers needed to be recalibrated frequently in order to work properly. Apparently an automobile had hit a wheel balancer and although it was repaired it never worked properly thereafter. The tool supply was sometimes insufficient to allow all employees to use the tools when they needed them. He complained almost daily to Barrios about this matter, but Barrios' reply was that Hill would not allow them to spend the money that was needed for new equipment. McConnell once complained directly to Hill about the equipment. Hill responded that McConnell should patch the air hoses as best he could because Hill could not order new ones.

Wilbur Cleckley has worked in the TLE at the facility since 1997. Cleckley raised the matter of insufficient staff with Barrios, who replied by saying that Hill would not allow him to hire more employees. Cleckley raised the matter directly with Hill who responded that he could not

³ I do not credit Wright's testimony that he did not receive this message from Funk.

hire any more employees for the TLE at that time. Like Funk, Cleckley then raised the matter with Wright, Respondent's regional manager for the TLE, who said that he would look into the matter. As a result Hill again discussed the matter with Cleckley. Hill explained to Cleckley that the amount of work and sales that the TLE was producing did not justify additional staff. On
 5 another occasion Cleckley asked Hill if he could get a tire repair stand for use in TLE. This piece of equipment would allow the employees to make more tire repairs. Hill refused.

Gary Anderson worked in the TLE from November 1999 until around July 28, 2000. He too tried unsuccessfully to convince Hill to remedy the problems of staffing and equipment.
 10 Anderson then took the matter up with Eskra. Eskra advised Anderson to speak to Hill.

Eskra attempted to deal with the understaffing into the TLE by posting a notice soliciting employees in the facility to transfer into the TLE, but no one applied. Eskra then raised the matter with Hill, who said that there was no need to hire any more employees in the TLE. Eskra
 15 did not press the matter with Hill or anyone else. Eskra also allowed the TLE employees to get tools that they needed such as a socket or oil filter wrench if they were available inside the store.⁴

D. Response to the union campaign

20 Immediately after the Union demanded recognition Carla Flinn and Bill Buford, Respondent's labor relations managers and Rich Hayes, Respondent's regional personnel manager for its TLE division, arrived at the facility from Bentonville, Arkansas. Gary Wright, regional manager for the TLE division also arrived at the facility.

25 Steven Grimm was an assistant bakery manager at the facility until June 29. After the petition was filed Grimm attended daily or more meetings of the managers to discuss the developments concerning the Union at the facility. Flinn conducted these meetings. At the first meeting Flinn explained that the Union was trying to represent employees at the facility and that
 30 Respondent was opposing that effort. Flinn asked the managers to talk to the employees in their respective areas of authority or who they knew personally to determine if they were for or against the Union and to find out what the employees were thinking about the matter. Flinn said that if the employees had any questions the managers were to write the questions on index cards and forward the index cards to upper management. Flinn also instructed the managers to
 35 find two employees in each of their areas that stood behind Respondent 100 percent and try and persuade those employees to transfer to the TLE because Respondent did not want the Union there.⁵ Grimm talked to about 20 employees but discovered that they did not have questions and were not willing to transfer to the TLE.⁶

40 ⁴ Eskra testified that in March, Cleckley was in the process of receiving a verbal reprimand for poor work performance; Eskra was present. In defense, according to Eskra, Cleckley claimed that the TLE was understaffed. Eskra terminated the verbal reprimand and then posted the notice described above. However, at the hearing in the representation case held earlier, Eskra testified he overrode the reprimand because the supervisor "couldn't
 45 substantiate the [dirty] conditions clearly." Eskra made no mention then about any complaints from Cleckley concerning understaffing that lead him to post a vacancy. This is an indication of Eskra's willingness to change his story to suit the situation.

⁵ Grimm gave various versions of this statement; these facts are a composite of them, especially taking into account the version he gave in response to my questions.

50 ⁶ Flinn did not testify at the hearing, nor did Respondent explain her absence. I infer that the reason she was not called as a witness is because her testimony would not have been

Continued

On June 19, Michael Bennett, Respondent's vice president for TLE, met with the TLE employees at the facility. Other managers, both from the facility and elsewhere were present. Bennett told the employees that he was aware of their concerns regarding Hill and that Respondent was already investigating the matter and he personally was involved in the investigation. Hill said that he would increase staffing so that the employees could take their lunches and would not have to work so late. Bennett also said that the equipment problems would be taken care of, that tool supplies would be increased and the equipment would be repaired and inspected. One employee questioned whether the structural integrity of the floor was sufficient to support the heavier vehicles that were being brought in. Bennett said that he would look into the matter. Bennett said that there was no need for third party representation and that the employees should use the open door policy and that would take care of everything for them. He also announced that Ron Brewer was replacing Hill as TLE district manager and that Hill was going to be retrained. Bennett passed out his business cards to the employees and told them to contact him if they had any more problems. Bennett's number had not previously been available to the employees. This was the first time the employees had met with Bennett. Wright was also present at this meeting. He apologized to Funk for not getting back to in a timely fashion.⁷ Hill in fact was replaced by Brewer on June 22. Hill was removed from his position because he failed to adequately address the problems that the employees had raised.⁸

On about June 28, Brewer met with the TLE employees; Eskra introduced him. Brewer said that he was going to take care of their concerns and would do a better job for them than Hill had.⁹

favorable to Respondent. I have considered Eskra's testimony that Flinn only mentioned that Respondent would be filling some positions in the TLE without more. I do not credit that testimony based on my observation of his demeanor and because, as explained above and below, I have not found his testimony otherwise convincing. I have also considered Hayes' testimony on this matter. He testified in a conclusory fashion that he did not recall anything being said by Flinn about the TLE. This testimony is of little assistance in determining what was said at the meetings.

⁷ These facts are based on a composite of the credible testimony of Funk, Anderson, and McConnell as well as the outline that was prepared for Bennett's use at this meeting. In doing so I have taken into account the fact that McConnell had been fired by Respondent and appeared angry as a result. But I nonetheless credit his testimony to the extent set forth above. Much of McConnell's testimony was undisputed; other portions were consistent with the testimony of other witnesses. His testified with specificity and his demeanor appeared credible. I have also considered Wright's testimony. Wright began testifying concerning the substance of the meeting, including the fact that Bennett told the employees that he was aware that a petition had been filed, that employees had concerns about the open door policy and with Hill. Wright was then lead by counsel into whether the subject of staffing was discussed; Wright answered that he did not remember any particular question that came out of the meeting and that no other topics were discussed. I do not credit this cursory testimony to the extent that it may be inconsistent with my findings set forth above. Bennett did not testify; Wright explained that Bennett no longer worked for Respondent.

⁸ Based on my observation of the demeanor of the witnesses and entire record, I do not credit Wright's testimony that Hill's demotion was unrelated to the union campaign.

⁹ These facts are based on the credible testimony of Funk and Anderson. Brewer admitted that he met with the employees of the TLE but he denied discussing staffing, equipment, or resolving problems. I do not credit these conclusory denials.

Meanwhile on June 27, Martino and Cathcart went to the facility to pass out literature. They arrived at about noon and left about 2 hours later. The literature encouraged employees to join the Union and gave answers to frequently asked questions regarding the organizational process. There are two main entrances to the facility: grocery and hard goods. Martino and Cathcart first stood at the grocery entrance, which employees use to enter and exit the facility. They distributed the literature to employees as they entered or left the facility.¹⁰ After about 10 minutes Eskra, Dominic D'Aurora, co-manager, Steve Jones, Respondent's district manager, "Patty", whose name tag identified her first name only and identified her as a manager, and Grimm appeared. They brought large trashcans with them and placed them near the entrance.¹¹ At times they stood so close to the union organizers that Martino and Cathcart were able to read their names on their name tags. D'Aurora remained outside the entire time and remained within 5–6 feet of Martino as he moved about. Jones was there about 45 minutes and Eskra and Grimm about 30 minutes. In addition Eskra and Jones stood in the vestibule between the first and second doors that lead to the grocery area. They were visible to Martino and Cathcart as they stood in that area. All watched Martino and Cathcart as they handed their literature to employees. After about 30 minutes Cathcart moved to the hard goods entrance. She observed Grimm at that entrance sitting on a bench. After a few minutes Martino began to walk towards that entrance too. D'Aurora closely followed along with him. Martino mentioned that he would be doing a lot of walking back and forth between the entrances; he asked if D'Aurora would be able to keep up with him. D'Aurora replied that he was outside there everyday so he would be able to do that. Martino replied that he had been outside the facility and never saw D'Aurora there. D'Aurora answered that he was outside there on that day.

About 2 months after Grimm stopped working for Respondent due to an on the job injury he received a telephone call from Flinn. Flinn explained that Grimm had been named in a "lawsuit" and asked if Grimm was still a 100 percent Wal-Mart person. Grimm replied that he was. Flinn went on to suggest to Grimm that if he were asked about the June 27 incident he should say that when he was outside smoking or going to lunch. Later Grimm filed a worker's compensation claim against Respondent and Respondent contested his claim. Grimm hired an attorney to assist him in that claim. In about April 2002, after Grimm had been terminated by Respondent, Flinn again called him. This time when Flinn asked if Grimm was a company man Grimm answered no, that he would only tell the truth. Grimm said that he had been terminated and Flinn said that she was unaware of that. Grimm also told Flinn that he had been in touch with the Union. Flinn mentioned that if Grimm needed anything he should let her know.¹²

Martino and Cathcart returned to the facility on July 17; this time Funk accompanied them. They distributed the same literature as they had on June 27. They arrived around 1:45 p.m. left around 3:30 p.m., except that Funk entered the facility before 2 p.m. because he started work at that time. Before he entered the facility Funk distributed handbills to employees who were using the sheltered smoking area near the grocery entrance. Eskra, D'Aurora, and Jones again appeared outside the grocery entrance; this time Jimmy Johnson, Respondent's

¹⁰ Employees were either wearing or carrying their distinctive uniforms.

¹¹ In its brief the Union made an argument concerning Respondent's policy of placing trashcans at the site of hand billing. Respondent has filed a motion to strike that argument from the Union's brief on the basis that the argument is based on evidence that is not in the record. While I deny the motion to strike, I find the Union's argument unpersuasive.

¹² These facts too are a composite of the several versions of this conversation that Grimm provided; Flinn did not testify. These facts show Flinn's ability to ask potential witnesses to color their testimony in these proceedings. It also casts a cloud on the credibility of Respondent's witnesses in general.

district loss prevention supervisor, joined them. They again watched the union organizers as they handed out their literature to employees. Martino told them that he thought their conduct of standing there watching them was unlawful, and they backed away from the organizers. D'Aurora and Jones remained outside the entire time; Eskra and Johnson stayed in the vestibule for a time. Cathcart then walked over to the hard goods entrance and encountered Johnson and Patty. Cathcart indicated to them that they were acting in an illegal fashion by observing them. Patty answered that it did not matter, that they were there first. Cathcart asked for Patty's full name, but Patty refused to give it. Cathcart then started to return to the grocery entrance where she encountered Martino who had begun to walk towards the hard goods entrance. Martino asked if everything was okay and Cathcart replied that it was.¹³

Funk wore a union pin while at work. Albu noticed it and they joked about it. Funk attended the hearing in the representation case and testified on behalf of the Union. Eskra also attended the representation case hearing. On July 4, Respondent posted a notice for an opening in the loss prevention department. Funk signed a posting along with 13 other employees. About 10 employees met the minimum qualifications for the position and were interviewed by Jimmy Johnson, Respondent's district loss prevention supervisor. Funk was among those interviewed. He then had a conversation with Brewer, who called Funk into his office and asked Funk what he thought about how the other employees in TLE felt about the Union and if he felt the Union would succeed. Funk replied that as long as the company was doing what it was supposed to be doing he didn't see a problem. On about July 20, Funk was selected for the loss prevention position and he began working there on about July 27.¹⁴ In

¹³ The foregoing facts are based on a composite of the testimony of Martino and Cathcart. I conclude both were credible witnesses and their testimony for the most part was mutually corroborative. There were, however, some differences in testimony. For example, Cathcart testified that Patty was present during the hand billing while Martino made no mention of Patty. I generally credit Martino's testimony concerning the persons present and the length of time they remained watching the union organizers; his testimony was more detailed and his demeanor was more confident. However, I do credit Cathcart's testimony to the extent that she had a conversation with Patty outside the presence of Martino. Cathcart's testimony in that regard was detailed and fully credible. Grimm's testimony confirmed that on June 27, after the union organizers appeared, he went outside the entrance to the facility and made his "presence known." He also confirmed that D'Aurora was present. To the extent that Grimm's testimony conflicts with the testimony of Martino and Cathcart, I credit the testimony of the latter. I have also considered Eskra's testimony that he and others only made sporadic appearances outside the facility to put out the trash cans, leave and return for lunch etc. This testimony appears similar to the testimony that Flinn sought to induce from Grimm. I again do not credit Eskra's testimony. I have also considered Johnson's testimony. He testified that as he entered the facility a woman, presumably Cathcart, handed him a leaflet and made a reference to him being from Arkansas. He further testified that he then entered the facility where he remained until he came back out 3-4 hours later when he and Patty decided to go out for a smoke. He testified that when he got there a woman, again presumably Cathcart, walked over and "spit out some kind of code or something that I was violating." Cathcart then took down his name and Patty's first name and then they went back inside the store. This testimony confirms Cathcart's testimony that Patty was present. To the extent that it conflicts with the facts described above, I do not credit it. Finally, I note that D'Aurora and Jones did not testify in this proceeding and their failure to do was not explained by Respondent. I conclude that had they testified their testimony would not have supported Respondent position taken at trial.

¹⁴ These facts are based on Funk's credible testimony. Brewer testified that Funk came into his office after he had been selected for the loss prevention position and announced that he was

Continued

about February 2001 Funk attempted to get back into the TLE by signing a posting. He discussed the matter Budrow. During the course of the conversation Budrow said that Flinn told him not to let Funk back into the TLE.¹⁵

5 After the petition was filed Eskra, Hayes, and other managers worked in the TLE assisting the unit employees. Eskra worked in the TLE 15–30 per week from mid-July to the end of August. McConnell had not even met Eskra before the petition was filed. A day or so after the Union demanded recognition Hayes visited the facility and proceeded to work with the employees in the TLE changing oil and mounting tires. Hayes testified that he always performs
10 this work when he visits Respondent's facilities. Hayes testified that it became evident that there were "some pretty serious equipment issues." He also observed that the facility lacked sufficient staff. Hayes examined several reports and guidelines and made the decision to hire more employees for the TLE; however, these were different guidelines than Hill had used to explain to employees why he could not hire additional employees before the petition was filed.
15 Hayes worked at the facility for about 15–16 days; he normally visits a store for about 3–4 hours or sometimes for a day or two. Hayes returned to the facility and stayed a week or two several times until September.

20 After the petition was filed but before the scheduled election-day two new rim clamp tire machines were installed. A tire repair stand was added. New wheel balancers replaced the old ones and new air hoses were installed. New tools were ordered and made available to employees. In ordering the tools Respondent used its ordering manual. That manual describes the tools that should be available to employees to perform their work. Hayes testified that he had ordered tools for other TLE locations as well prior to visiting the facility in June.¹⁶

25 Hayes admitted that after the petition was filed he decided to increase the number of employees working in the TLE. He did some calculations and determined that the TLE was understaffed by four persons. Again, these were obviously different calculations than Hill had used and there is no evidence that the process used by Hill in calculating staffing limits was
30 incorrect. Pursuant to Hayes' calculations on June 17, Respondent posted a notice for a service technician position in the TLE. Mitchell Horney has worked at the facility since 1997. He began working in the frozen foods department. In late June he transferred into the TLE. This move came after a conversation with Eskra. Eskra asked Horney for a favor. Eskra explained that he wanted Horney to move into the TLE because they were short of help.
35 Horney asked to think about it a few days, and after he did so he told Eskra that he would move

finished with the Union and offered to tell Brewer anything he wanted to know such as who was for the Union and who was against it. Brewer testified that he declined Funk's offer. I do not credit this contrived testimony. Johnson testified that he selected Funk after consultation with
40 Eskra. He explained that he selected Funk because he had a sense about himself that was impressive and he was confident; both came from a military background. Johnson testified that Funk made good responses to questions. Although Johnson acknowledged that at the time he selected Funk he was aware of the fact that a petition had been filed in the TLE, he denied having knowledge of Funk's union sympathies. Eskra testified that he never told Johnson of
45 Funk's involvement in the union campaign. Based on the entire record, including my observation of their demeanor, I do not credit Johnson's or Eskra's testimony on this matter.

¹⁵ Budrow and Flinn did not testify at the hearing.

¹⁶ Hayes testified that the decision to bring in the new equipment was unrelated to any employee complaint. I do not credit this testimony. I have concluded above that other agents of
50 Respondent directly promised to remedy the complaint the employees had voiced concerning the inadequacy of equipment in the TLE.

to the TLE. Horney was then interviewed for a position in the TLE by Eskra, Flinn, and Bill Buford, another labor relations manager for Respondent.¹⁷ Near the end of the interview Flinn mentioned that there was union activity going on in the TLE; Horney replied that he would go over there to help out, but if the Union succeeded in organizing the employees there he would not want to remain there. Horney explained that he had worked for another business for 10 years but he and other employees lost their jobs because of union related matters. Horney was assured that he would be accommodated and would be removed from the TLE if the Union succeeded.¹⁸ Six other employees signed the posting: Horney was the last to do so. Respondent interviewed all the employees who met the minimum qualifications for the positions. Another employee, Jen Baker, was selected from the list and also transferred into the TLE. Baker transferred into the TLE sometime in late June. Scott Snow transferred from another store and began working in the TLE on June 24. Albu, Respondent's new TLE manager, told him of an opening at the facility. Snow already knew Albu and had earlier asked Albu to let him know if an opening at the facility became available. Snow testified that during his interview no mention was made of the union campaign and no one ever asked him about his union sympathies. On about June 23, Bob Wyant, an employee in the TLE, quit.

At some time before July 14, Respondent posted for another notice, this time to fill service writer/service technician positions in the TLE. Respondent selected Will DeClark,¹⁹ Rebecca Pazsint, and John Horner to transfer into the TLE. In late July Respondent posted yet another notice to fill a service technician position in the TLE after Gary Anderson was terminated. Respondent selected Ted Hubbard to fill the position. Stacey Tanner, who had signed the June posting, began working in the TLE on July 14. Meanwhile employees Randy Callen, James King, and Cliff Funk all left the TLE during July. Dennis Wolf transferred from another store and began working in the TLE on about July 28. In sum, during the time period from after the petition was filed until the end of July Respondent transferred nine new employees into the TLE while five employees left.²⁰

¹⁷ At the representation case hearing Eskra testified that only he and Albu interviewed certain applicants, including Horney. At this hearing he admitted that Flinn and Buford were also present for some interviews. At the same representation case proceeding Eskra testified that he made the final decision of who to transfer in and out of the TLE. In this case Eskra claimed that decision was made by the district manager. These inconsistencies seriously detracted from Eskra's credibility.

¹⁸ These facts are based on Horney's credible testimony. The presence of Eskra, Flinn, and Budrow at the interview suggests that more was going on than simply selecting a person qualified to work in the TLE. Eskra admitted that Flinn raised the matter of the union organizing the TLE in the interview. I do not credit Eskra's testimony to the extent that it conflicts with Horney's.

¹⁹ The parties dispute the day on which DeClark transferred into the TLE. The parties originally stipulated that he did so on July 28, but that stipulation was received subject to clarification. Later, after examining documents that showed that DeClark had worked 71.75 hours in the TLE for the payroll period ending July 14, the General Counsel sought to withdraw from the stipulation. That request is granted. However, I find it unnecessary to resolve exactly when in July DeClark began working in the TLE.

²⁰ I do not include in my calculations employees such as Barbara Pesce who apparently worked in the TLE for a short period of time but who left before the election date. There was no explanation of the circumstances of her transfer into or out of the TLE.

III. Analysis

A. Section 8(a)(1) Allegations

5 The complaint alleges that on about June 20, Bennett promised the TLE employees that Respondent would remedy their grievances, including getting them new equipment, more
10 workers, and replacing Hill and that therefore there was no need for a union. I have described in more detail above how about a week after the petition was filed Bennett met with the TLE
15 employees. Bennett told the employees that he was aware of their concerns over poor staffing and that he would increase staffing so that the employees could take their lunches and would not have to work so late. Bennett also said that the equipment problems would be taken care of, that tool supplies would be increased and the equipment would be repaired and inspected. Bennett said that there was no need for third party representation and that the employees
20 should use the open door policy and that would take care of everything for them. He announced that Ron Brewer was replacing Hill as TLE district manager and that Hill was going to be retrained. Bennett passed out his business cards to the employees and told them to contact him if they had any more problems.

25 The Board has held that an employer violates Section 8(a)(1) if it promises to remedy employee grievances in an effort to undermine support for a union. *Insight Communications Co.*, 330 NLRB 431, 455–456 (2000). Here Bennett explicitly promised to remedy certain grievances. These promises occurred about a week after the petition was filed and Bennett expressly indicated that the remedying of the grievances eliminated the need for third party representation (read: Union).

30 Respondent argues that it is well-established that where an employer has a policy of soliciting grievances the employer may continue that policy during an organizational drive, citing *DMI Distribution of Delaware*, 334 NLRB 409 (2001) and *Wal-Mart Stores, Inc.*, 339 NLRB No. 153 (2003). But this argument misses the point. Respondent indeed does have a policy of
35 soliciting employee grievances, but as the Union points out in its brief and as the record indicates, Respondent does not have a policy of invariably remedying those grievances. Here, the employees had repeatedly complained about the lack of adequate staff and equipment in the TLE and despite the various policies used by Respondent to encourage employee participation, Respondent had consistently failed to address those concerns. It was only with
40 the arrival of the Union that Respondent changed its course and promised to address those concerns. By promising to remedy employee concerns in an effort to undermine support for the Union Respondent violated Section 8(a)(1).

45 The complaint alleges that Respondent violated Section 8(a)(1) by removing District TLE Manager David Hill and replacing him with Ron Brewer in an effort to undermine support for the Union. As indicated above the employees in TLE had become frustrated with Hill's repeated unwillingness to address their concerns. After the petition was filed, Respondent became aware of the employees concerns regarding Hill and quickly removed Hill from his position. Bennett
50 directly connected the removal of Hill as addressing the concerns of employees so as to make a union unnecessary. The Board has held that it is unlawful to remove a supervisor for the purpose of inducing employees to reject a union. *Anna Lee Sportswear*, 220 NLRB 982, 990 (1975), enf'd. 543 F.2d 739 (10th Cir. 1976). See generally *Parker-Robb Chevrolet*, 262 NLRB 402 (1982).

 Respondent, citing *Ohmite Mfg. Co.*, 290 NLRB 1036, fn.1, 1054-1057 (1988), argues that it removed Hill for legitimate business reasons. It points out that Hill had previously been

disciplined by Respondent and that after the petition was filed Wright investigated Hill's conduct at the facility and elsewhere and determined, in light of the previous discipline that Hill should be demoted. However, it is clear that the reason Respondent removed Hill from his position was because the employees had complained that he did not rectify their problems and chose to seek union representation as a result. This is not a legitimate business reason for removing a supervisor; rather it is an unlawful reason. Moreover, as indicated above, I have found that Respondent itself directly linked the removal of Hill with the union campaign. By removing David Hill as District TLE Manager in an effort to undermine support for the Union, Respondent violated Section 8(a)(1).

The complaint alleges that on June 27 and July 17, Respondent unlawfully engaged in surveillance of its employees' union activities. As described above, on June 27, Eskra, D'Aurora, Jones, and others appeared and observed the hand billing. At times they stood so close to the union organizers that Martino and Cathcart were able to read their names from their nametags. D'Aurora remained outside the entire time and remained within 5–6 feet of Martino as he moved about. Jones was there about 45 minutes and Eskra and Grimm about 30 minutes. In addition Eskra and Jones stood in the vestibule between the first and second doors that lead to the grocery area. They were visible to Martino and Cathcart as they stood in that area. All watched Martino and Cathcart as they handed literature to employees. After about 30 minutes Cathcart moved to the hard goods entrance. She observed Grimm at that entrance sitting on a bench. After a few minutes Martino began to walk towards that entrance too. D'Aurora closely followed along with him. On July 17, Eskra, D'Aurora, and Jones again appeared outside the grocery entrance; this time Johnson joined them. They again watched the union organizers as they handed out their literature to employees. Martino told them that he thought their conduct of standing there watching them was unlawful, and they backed away from the organizers. D'Aurora and Jones remained outside the entire time; Eskra and Johnson stayed in the vestibule for a time.

An employer does not violate the Act by observing public union activity on its premises. *Metal Industries*, 251 NLRB 1523 (1980). However, here Respondent's conduct went beyond mere observation. Respondent's agents placed themselves outside and in close proximity to the union activity and remained observing at close range for significant periods of time. *Kenworth Trucking Co.*, 327 NLRB 497, 501 (1999). I conclude that Respondent violated Section 8(a)(1) by unlawfully engaging in surveillance of the union activities of employees.

The complaint next alleges that on about June 28, Brewer promised the TLE employees that Respondent would remedy their grievances, including their desire for new equipment and the hiring of additional staff. As described above, Brewer said that he was going to take care of their concerns and would do a better job for them than Hill had. Although these remarks standing alone might be ambiguous they must be understood in the context of other events. Here, Respondent had embarked on a vigorous campaign to adjust employee concerns that had been ignored in the past in an effort to undermine support for the Union. In that context Brewer's comments were yet another assurance to employees that their concerns would be resolved. By again promising to remedy employee concerns in an effort to undermine support for the Union Respondent violated Section 8(a)(1).

The complaint also alleges that on about July 12, Brewer interrogated employees about their union activities and the union activities of other employees. I have recounted above how Brewer called Funk into his office and asked Funk what he thought about how the other employees in TLE felt about the Union and if he felt the Union would succeed. Funk replied that as long as the company was doing what it was supposed to be doing he didn't see a problem. Funk was later selected for the loss prevention position.

Interrogations of employees concerning their union activities and sympathies are not per se violations of the Act. Rather the totality of the circumstances must be considered to determine whether the questioning was coercive. *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985). On the one hand, Funk was an open union supporter; he had testified at the representation case hearing for the Union and wore a union button to work. On the other hand the questioning occurred in Brewer's office and in the context of Funk's attempt to transfer to loss prevention. Moreover, Brewer did not limit his questioning to Funk's union sympathies; he sought to obtain the degree of union support of other employees who had not been open union adherents. This interrogation occurred in the context of other unfair labor practices. Under these circumstances I conclude that Respondent violated Section 8(a)(1) by coercively interrogating an employee concerning the union sympathies and support of other employees.

Next, the complaint alleges between June 13 and August 21, Respondent solicited employees who were thought not to be union supporters to transfer into the TLE. I have concluded above that Flinn explained to Respondent's supervisors and managers that the Union was trying to represent employees at the facility and that Respondent was opposing that effort. Flinn asked the managers to talk to the employees in their respective areas of authority or who they knew personally to determine if they were for or against the Union and to find out what the employees were thinking about the matter. Flinn also instructed the managers to find two employees in each of their areas that stood behind Respondent 100 percent and try and persuade those employees to transfer to the TLE because Respondent did not want the Union there. Grimm talked to about 20 employees and discovered that they did not have questions and were not willing to transfer to the TLE.

Soliciting employees for employment in order to defeat a union organizing effort is unlawful. *Airborne Freight Corp.*, 263 NLRB 1376, 1384–1385 (1982), enfd. den. on other grounds, 728 F.2d 357 (6th Cir. 1984). In that case the employer asked some persons whether they come to work for it because it "wanted someone part-time to vote against the Union". *Id.* In this case, although there is evidence that Respondent directed its supervisors to solicit employees to transfer into the TLE in an effort to undermine support for the Union, there is no evidence concerning what the supervisors specifically said to the employees. Under these circumstances I shall dismiss this allegation of the complaint.

The complaint alleges that Respondent installed new equipment in the TLE to remedy employee grievances in order to undermine support for the Union. I have found above that after the petition was filed but before the scheduled election-day two new rim clamp tire machines were installed. New wheel balancers replaced the old ones and new air hoses and nozzles were installed. New tools were ordered and made available to employees. Before the petition was filed the employees had repeatedly complained about the poor condition of the equipment in the TLE but their complaints went unanswered. I have also concluded above that Respondent violated Section 8(a)(1) when after the petition was filed Bennett promised to remedy those complaints. An employer violates Section 8(3) and (1) when it grants benefits to employees in order to undermine their support for a union. *Insight Communications Co.*, supra 457; *Marriott Corp.*, 310 NLRB 1152, 1158 (1993).

Respondent argues that the installation of new equipment is not a grant of benefit such as health insurance or wage increases citing *Sears, Roebuck, & Co.*, 305 NLRB 193 (1991) and *Zartic, Inc.*, 277 NLRB 1478, 1496 (1986) and thus is not a working condition of the employees. This argument runs contrary to the facts. In this case the complaints of the employees directly affected their terms and conditions of employment because, as described above the poor equipment created safety problems and added to the employees inability to perform the work in

a timely fashion causing them to skip or shorten breaks and other rest periods. Next Respondent argues that some of the new equipment that was purchased for the TLE cost only a nominal amount of money. This indeed was the case and had Respondent only purchased a few valve core extractors at 99 cents each a different result might be justified. But here the entire package of equipment that was installed in the TLE was far from nominal. Next Respondent argues that by installing the new equipment it was simply rectifying the problem that Hill had created by failing to have the new equipment installed in the TLE as needed and was consistent with Respondent's long-standing policy, citing *Poultry Packers, Inc.*, 237 NLRB 250, 253 (1978) and *Williams Litho Serv., Inc.*, 260 NLRB 773, 774 (1982). However, as pointed out above, Respondent did not have a policy of rectifying all employee grievances. Moreover, here officials of Respondent other than Hill knew or should have known that the employees had complained to Hill about the poor equipment; Eskra, for example, knew of the problem. Hayes, who testified that he made regular visits to TLEs and ordered new equipment as needed, failed to discover the problem at the TLE at issue in this case until after the petition was filed. In other words, Respondent was aware of the problem but chose to do nothing until after the Union came on the scene. Finally, Respondent argues that the poor condition of the equipment in the TLE caused safety problems and impeded that efficiency of its operations there. Again, this was the case, but Respondent chose to ignore those concerns until the employees began showing support for a Union. I conclude that by installing new equipment in the TLE to remedy employees complaints in order to undermine support for the Union, Respondent violated Section 8(a)(3) and (1) of the Act.

Next the complaint alleges that in or around June, July, and August Respondent transferred eight employees into the TLE department because it believed that the employees did not support the Union and in an effort to dilute the support for the Union. Respondent argues that Section 10(b) bars this allegation because it was not contained in a charge until the fifth amended charge was filed on May 30, 2002, well after the 6-month period. The General Counsel answers that this allegation is closely related to the allegation in a timely filed first amended charge in this case that alleged that Respondent unlawfully increased staffing in the TLE. Respondent argues that there is a difference between an allegation that employees were transferred into the TLE as an effort to remedy employee grievances and an allegation that employees were transferred there to pack the unit. Indeed, that is the case. But the issue is not whether the allegations are different; the issue is whether the allegations in the charge are sufficient to support the allegations in the complaint. I conclude that the allegation in the charge clearly supports the allegation in the complaint. *Nickles Bakery of Indiana*, 296 NLRB 927 (1989); *Redd-I, Inc.*, 290 NLRB 1115 (1988).

As set forth above in more detail, during the time period from after the petition was filed until the end of July Respondent transferred nine employees into the TLE while five employees left. I have also concluded above that Flinn instructed the managers to find two employees in each of their areas that stood behind Respondent 100 percent and try and persuade those employees to transfer to the TLE because Respondent did not want the Union there. The timing of the transfers, coming shortly after the petition was filed and before the Regional Director issued a decision in representation case, also supports that conclusion Respondent did just as Flinn had ordered. Respondent's discussions with and selection of Horney supports the inference that it was attempting to transfer employees into the TLE who would not support the Union. These facts, together with other conclusions that Respondent conducted an unlawful campaign to insure that the TLE employees did not select the Union, establishes that Respondent sought to transfer employees in the TLE in an effort to dilute the support for the Union.

Respondent argues that it tried to increase staffing levels in the TLE even before the petition was filed but was largely unsuccessful. But this argument ignores the fact that Hill specifically told the employees that he would make no efforts to increase staffing because it was not warranted under Respondent's policy as he interpreted it. That changed only after the Union arrived on the scene. Next, Respondent argues that it had legitimate business reasons for increasing staffing in the TLE, citing *Royal Manor Convalescent Hosp.*, 322 NLRB 354 (1996), enf'd 141 F.3d 1178 (9th Cir. 1998). But again, whatever business reasons there were for increasing the staffing in the TLE existed long before Respondent decided to act on them. I conclude that it was the union activity of the employees that triggered Respondent's action. Respondent argues that the General Counsel's case must fall because he failed to establish that Respondent knew about the union sentiments of the employees it transferred, citing *Rahn Sonoma Ltd.*, 322 NLRB 898, 901 (1997); *D&E Electric, Inc.*, 331 NLRB 1037, 1039 (2000); and *Aqua Cool*, 332 NLRB 95, 106–107 (2000). However, as the General Counsel points out the Board has found unlawful "unit packing" even where there was no evidence that the employer knew of the union sentiments of the employees brought into the unit. *Regal Recycling*, 329 NLRB 355, 368–369 (1999); *Trend Construction Corp.*, 263 NLRB 295, 299–300 (1982); and *Maxi Mart*, 246 NLRB 1151, 1160 (1979). Respondent points out that it transferred Hubbard into the TLE despite the fact that Hubbard had worked at a union-represented store before he came to work for Respondent and had disclosed that fact on his employment application. However, that evidence falls well short of showing whether or not Hubbard supported the union at his former employer and I accord it little weight. I have considered the fact that the employees were transferred into the TLE on a permanent rather than temporary basis, but I conclude that this fact is insufficient to overcome other more convincing evidence that Respondent's conduct was unlawful. By transferring employees into the TLE to dilute the support for the Union there, Respondent violated Section 8(a) (1).

Also, in his brief the General Counsel argues that Respondent engaged in this conduct to remedy employee grievances in order to undermine support for the Union. Although this theory was not specifically alleged in the complaint, I conclude that the matter was fully litigated. Evidence was introduced concerning the employees' complaints, including the need for additional staff. Respondent presented its case on this issue and the matter has been fully briefed. I therefore will resolve this issue. As described above, the employees had complained about inadequate staffing before the petition was filed. After the petition was filed Respondent promised to resolve this problem and then did so. By transferring employees into the TLE in order to remedy employee complaints about inadequate staffing in order to undermine support for the Union, Respondent violated Section 8(a)(1).

The complaint also alleges that Respondent "hired" about eight new employees in the TLE because its employees supported the Union. There is no evidence that Respondent hired, as opposed to transferred, any new employees into the TLE and the General Counsel does not make any arguments in his brief to support this allegation in the complaint, at least not to the extent that this issue is covered by other allegations in the complaint.²¹ I shall dismiss this allegation.

Finally, the complaint alleges that Respondent violated Section 8(a)(3) and (1) when it transferred employee Clifford Funk from the TLE to the loss prevention position. As described

²¹ The General Counsel points out in its brief that Respondent sent managers and supervisors to work in the TLE for extended periods of time after the petition was filed. The General Counsel appears to argue that this conduct was unlawful. I do not reach that issue. The complaint did not allege that this conduct was unlawful nor was the matter fully litigated.

more fully above, Funk wore a union pin while at work. On July 12, Funk attended the hearing in the representation case and testified on behalf of the Union. On July 4, Respondent posted for an opening in the loss prevention department. Funk signed a posting along with 13 other employees. About 10 employees met the minimum qualifications for the position and were interviewed by Jimmy Johnson, Respondent's district loss prevention supervisor. Funk was among those interviewed. He then had a conversation with Brewer, who called Funk into his office and unlawfully asked Funk what he thought about how the other employees in TLE felt about the Union and if he felt the Union would succeed. Funk replied that as long as the company was doing what it was supposed to be doing he didn't see a problem. Funk was later selected for the loss prevention position. In about February 2001 Funk attempted to get back into the TLE by signing a posting. He discussed the matter with Gerard Budrow, Respondent's supervisor. During the course of the conversation Budrow said that Flinn told him not to let Funk back into the TLE.

It is clear that Funk was in favor of the Union and that Respondent was well-aware of this fact. The evidence also shows that Respondent violated the Act as described above in an attempt to prevent the employees in the TLE from selecting the Union. Part of this unlawful scheme was to dilute the support of the Union by transferring additional employees into the TLE. Transferring a prounion employee out of the TLE fit neatly within this pattern. I conclude that the General Counsel has met its initial burden of showing that Respondent transferred Funk out of the TLE in order to dilute the support for the Union there.

Respondent argues that it has shown that there was a legitimate reason for posting the TLE position and that Funk voluntarily applied for that position. While these are factually accurate statements, they are beside the point because it was Respondent's selection of Funk for the transfer that is the violation here. I conclude that by transferring Funk out of the TLE in order to dilute the support for the Union there Respondent violated Section 8(a)(3) and (1).

Conclusions of Law

1. By the following conduct Respondent violated Section 8(a)(1) of the Act:

(a) Promising to remedy employee concerns in an effort to undermine support for the Union.

(b) Removing David Hill as district TLE manager in an effort to undermine support for the Union, Respondent violated Section 8(a)(1).

(c) Engaging in surveillance of the union activities of employees.

(d) Coercively interrogating an employee concerning the union sympathies and support of other employees.

(e) By transferring employees into the TLE to dilute the support for the Union.

(f) By transferring employees into the TLE to remedy employee complaints about inadequate staffing in order to undermine support for the Union.

2. By the following conduct Respondent violated Section 8(a)(3) and (1) of the Act:

(a) Installing new equipment in the TLE to remedy employee complaints in order to undermine support for the Union.

(b) Transferring Clifford Funk out of the TLE in order to dilute the support for the Union.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I note the neither the General Counsel nor the Union seek affirmative relief.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:²²

ORDER

The Respondent, Wal-Mart Stores, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promising to remedy employee concerns in an effort to undermine support for the Union.

(b) Removing supervisors from their position in an effort to undermine support for the Union.

(c) Engaging in surveillance of the union activities of employees.

(d) Coercively interrogating employees concerning the union sympathies and support of other employees.

(e) Installing new equipment to remedy employee complaints in order to undermine support for the Union.

(f) Transferring employees into the TLE to dilute the support for the Union.

(g) Transferring employees into the TLE to remedy employee complaints about inadequate staffing in order to undermine support for the Union.

(h) Transferring employees out of the TLE in order to dilute the support for the Union.

²² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facility in New Castle, Pennsylvania, copies of the attached notice marked "Appendix."²³ Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 20, 2000.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. November 12, 2003

William G. Kocol
Administrative Law Judge

²³ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT promise to remedy employee concerns in an effort to undermine support for the United Food and Commercial workers Union, Local No. 880 a/w United Food and Commercial Workers International Union, AFL-CIO (the Union) or any other labor organization.

WE WILL NOT remove supervisors from their position in an effort to undermine support for the Union or any other labor organization.

WE WILL NOT engage in surveillance of the union activities of employees.

WE WILL NOT coercively interrogate employees concerning the union sympathies and support of other employees.

WE WILL NOT by install new equipment to remedy employee complaints in order to undermine support for the Union or any other labor organization.

WE WILL NOT transfer employees into the TLE to dilute the support for the Union.

WE WILL NOT transfer employees into the TLE in order to remedy employee complaints about inadequate staffing in order to undermine support for the Union.

WE WILL NOT transfer employees out of the TLE in order to dilute the support for the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

Wal-Mart Stores, Inc.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

1000 Liberty Avenue, Federal Building, Room 1501, Pittsburgh, PA 15222-4173

(412) 395-4400, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (412) 395-6899.